

ASSEMBLY BILL

No. 1651

Introduced by Assembly Member Firebaugh

February 21, 2003

An act to add Chapter 28.5 (commencing with Section 22928) to Division 8 of the Business and Professions Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1651, as introduced, Firebaugh. Freight shippers: unfair business practices.

Existing law imposes various requirements on motor carriers, including biennial terminal inspections conducted by the Department of the California Highway Patrol, and participation in the Department of Motor Vehicles' pull notice program under which the motor carrier is advised of driving record violations of drivers enrolled in the program. Existing law provides various remedies for unfair business practices.

This bill would provide that a shipper that engages a motor carrier that is not in compliance with and that does not produce evidence of compliance with, sensitive safety requirements, including the above-referenced programs, shall be primarily liable if the motor carrier is involved in an accident or in the case of cargo loss or other personal injury. The bill would also define certain acts by a marine terminal or steamship line as unfair business practices.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 28.5 (commencing with Section 22928) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 28.5. FREIGHT SHIPPERS

22928. (a) As used in this chapter, “shipper” means a person who arranges, controls, directs, audits, pays, sets, or negotiates rates with, a motor carrier, including, but not limited to, the importer of record, the beneficial cargo owner, or third parties such as steamship lines, terminal operators, freight brokers, customs brokers, freight forwarders, nonvessel operating common carriers, or freight payment companies.

(b) As used in this chapter, “sensitive safety requirements” include all of the following:

(1) Compliance with the Department of the California Highway Patrol’s biennial inspection of terminals program.

(2) Compliance with financial responsibility requirements.

(3) Compliance with all required Department of Transportation permits.

(4) Compliance with the Department of Motor Vehicles’ pull notice program.

22928.1. A shipper that knowingly engages a motor carrier that is not in compliance with, and does not produce evidence of compliance with, sensitive safety requirements shall be primarily liable if the motor carrier is involved in an accident or in the case of cargo loss or other personal injury.

22928.2. It shall be an unfair business practice pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 for a marine terminal or steamship line to engage in any of the following with regard to an intermodal motor carrier operating at any California port:

(a) Imposing equipment handling or usage charges, including, but not limited to, the following:

(1) Storage.

(2) Detention or per diem, which are late charges for returning empty containers.

1 (3) Demurrage, which is a late charge for picking up full
2 containers.

3 (4) Flipping, which involves moving an intermodal container
4 from one chassis to another.

5 (b) Refusing to interchange equipment because of a pending
6 dispute concerning any of the following matters, until the time that
7 the dispute has been finally adjudicated, including any available
8 appeals:

9 (1) Maintenance and repair invoices.

10 (2) Billing inadequacies.

11 (3) Late invoices sent to the motor carrier after 30 days.

12 (4) Penalties inside terminals.

13 (5) Offsetting of money owed against alleged debts.

14 (c) Requiring a motor carrier to maneuver containers within a
15 marine yard without compensation and without certification that
16 the driver meets the same standard of training as dock labor.

17 (d) Fixing prices for transportation services, including, but not
18 limited to, store door moves or repositioning of equipment.

19 (e) Threatening or initiating retaliation against a motor carrier
20 who refuses to provide service for a noncompensatory rate.

21 (f) Refusing the return of equipment or tender.

22 (g) Charging usage or handling fees except during terminal
23 operating hours.

24 Nothing in subdivisions (a) or (b) prohibits a marine terminal or
25 steamship line from imposing the applicable charges on the
26 shipper.

